

## UNITED STATES DISTRICT COURT

for the

Western District of VirginiaRK'S OFFICE U.S. DIST. COURT  
AT LYNCHBURG, VAFILED  
for Danville  
APR 28 2009

JOHN E. CORCORAN, CLERK

BY: Taryn Coleman  
DEPUTY CLERK

United States of America )

v. )

CHARLES LEE TORIAN )

Case No: 4:01CR70057-001USM No: 09274-084Date of Previous Judgment: April 19, 2002

(Use Date of Last Amended Judgment if Applicable)

Defendant's Attorney

**Order Regarding Motion for Sentence Reduction Pursuant to 18 U.S.C. § 3582(c)(2)**

Upon motion of ☒ the defendant ☐ the Director of the Bureau of Prisons ☐ the court under 18 U.S.C. § 3582(c)(2) for a reduction in the term of imprisonment imposed based on a guideline sentencing range that has subsequently been lowered and made retroactive by the United States Sentencing Commission pursuant to 28 U.S.C. § 994(u), and having considered such motion,

**IT IS ORDERED** that the motion is:

☒ DENIED. ☐ GRANTED and the defendant's previously imposed sentence of imprisonment (as reflected in the last judgment issued) of \_\_\_\_\_ months is reduced to \_\_\_\_\_.

**I. COURT DETERMINATION OF GUIDELINE RANGE** (Prior to Any Departures)

Previous Offense Level: \_\_\_\_\_

Amended Offense Level: \_\_\_\_\_

Criminal History Category: \_\_\_\_\_

Criminal History Category: \_\_\_\_\_

Previous Guideline Range: \_\_\_\_\_ to \_\_\_\_\_ months

Amended Guideline Range: \_\_\_\_\_ to \_\_\_\_\_ months

**II. SENTENCE RELATIVE TO AMENDED GUIDELINE RANGE**

- ☐ The reduced sentence is within the amended guideline range.
- ☐ The previous term of imprisonment imposed was less than the guideline range applicable to the defendant at the time of sentencing as a result of a departure or Rule 35 reduction, and the reduced sentence is comparably less than the amended guideline range.
- ☐ Other (explain): \_\_\_\_\_

**III. ADDITIONAL COMMENTS**

Defendant was convicted of a "crack" cocaine offense under 21 U.S.C. § 841 and was sentenced as a career offender under U.S.S.G. § 4B1.1. Although Amendment 706 to the U.S. Sentencing Guidelines reduced most offense levels that are based on the amount of crack involved, the Amendment did not reduce offense levels that are based on the career offender guideline. Because Defendant's offense level was based on the career offender guideline, his guideline range is not changed by the amended guidelines. Therefore, he is not eligible for a sentence reduction pursuant to 18 U.S.C. § 3582(c)(2).

Except as provided above, all provisions of the judgment dated \_\_\_\_\_ shall remain in effect.

**IT IS SO ORDERED.**Order Date: April 28, 2009

Norman K. Moon  
Judge's signature

Effective Date: April 28, 2009  
(if different from order date)

Norman K. Moon, United States District Judge  
Printed name and title